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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Placer)

DAVID PHILLIPS et al.,

Plaintiffs and Respondents,

v.

VILLA DEL REY MANOR, INC., et al.,

Defendants and Appellants.

C083116

(Super. Ct. No. SCV0036676)

David Phillips sued Villa Del Rey Manor, Inc. (Villa Del Rey), alleging Villa Del Rey employees dropped Phillips' mother Margaret while she was in their care and that her injury and death were caused by medical malpractice. Phillips asserted claims for elder abuse, negligence, intentional infliction of emotion distress, and constructive fraud in his capacity as successor of his deceased mother (the successor claims); he also asserted a claim for wrongful death on his own behalf (the personal claim).

Villa Del Rey filed a petition to compel arbitration, arguing that Phillips signed an arbitration agreement on his mother's behalf with a power of attorney, and that he also signed the arbitration agreement on his own behalf. The trial court denied the petition, ruling that Phillips' signature on the arbitration agreement did not cover his personal claim, and there would be a risk of conflicting rulings if the successor claims went to arbitration and the personal claim did not.

Villa Del Rey now contends (1) the durable power of attorney was sufficiently broad to bind successor claims to arbitration, (2) Phillips consented to arbitrate his personal claim, (3) by asserting medical malpractice, the personal claim is subject to the mother's agreement to arbitrate (see *Ruiz v. Podolsky* (2010) 50 Cal.4th 838 (*Ruiz*) [deceased's agreement to arbitrate extends to wrongful death claims by heirs under the Medical Injury Compensation Reform Act of 1975 (MICRA)]), and (4) because the successor and personal claims are subject to arbitration, there is no risk of conflicting rulings.

We conclude Phillips agreed to arbitrate his personal claim, but the power of attorney did not authorize him to sign the Villa Del Rey arbitration agreement on his mother's behalf because it was not a health care power of attorney. Because the successor claims are not subject to arbitration, there is a risk of conflicting rulings if the personal claim goes to arbitration while the successor claims do not. Accordingly, we will affirm the trial court's order denying the petition to compel arbitration.

BACKGROUND

Margaret signed a durable power of attorney for financial matters in May 2012, naming Phillips as her agent in specified matters. The power of attorney gave Phillips authority to manage her real and personal property, partnership interests, investments, debts, taxes, deposit accounts, safe deposit boxes, living trusts, and credit cards.

Almost two years later, Phillips completed an application and agreement on Margaret's behalf for residency at Villa Del Rey. The facility provided lodging, food services, hygiene items, laundry service, housekeeping, activity programs, observation for changes in physical, mental, and emotional condition, routine care, medical care, assistance with medications, and care for temporary illnesses or recovery from minor surgery. The application and agreement included the following statement: "This community is a non-medical care community that is not allowed to provide 24 hour

nursing care.” (Emphasis omitted.) Margaret did not sign the application and agreement; Phillips signed it as Margaret’s “responsible party.”

There was also an arbitration agreement providing that the parties would arbitrate any dispute arising out of Villa Del Rey’s provision of services. Margaret did not sign the arbitration agreement; Phillips signed it as Margaret’s “Patient Representative/Agent.” Additionally, Phillips signed under the following statement: “Notice: I hereby represent and warrant that I have full authority to act, as a responsible party in making healthcare decisions for the patient. I have full and express authority as the patient’s agent to waive the patient’s right to a jury trial and enter into this arbitration agreement. I agree that any claims that I may have as a successor in interest, heir, representative of the patient or as an individual will be subject to the binding arbitration agreement set forth in this contract.” (Emphasis omitted.) Once again, Phillips signed as “Patient Representative/Agent.”

After Margaret died and Phillips filed the complaint, Villa Del Rey filed a petition to compel arbitration. The trial court held a hearing and issued an order denying the petition. It did not decide whether the power of attorney gave Phillips authority to sign the arbitration agreement on behalf of Margaret; rather, it ruled the arbitration agreement did not extend to Phillips’s personal claim, citing *Monschke v. Timber Ridge Assisted Living, LLC* (2016) 244 Cal.App.4th 583 (*Monschke*). The trial court added “it would be improper to split the claims in this instance as all the causes of action should be tried together in order to avoid the risk of conflicting rulings.”

DISCUSSION

There is a strong public policy in favor of arbitration. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195.) But the policy “ ‘does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement.’ [Citation.]” (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300.) Arbitration agreements are

enforceable and binding under the laws relating to contracts. (Code Civ. Proc., § 1281.) On the petition of a party to an arbitration agreement, the trial court must enforce the agreement unless, among other things, some of the claims are not subject to arbitration and “there is a possibility of conflicting rulings on a common issue of law or fact.” (Code Civ. Proc., § 1281.2, subd. (c).)

Villa Del Rey does not argue there are no common issues of law or fact. Rather, it argues the successor claims and the personal claim are subject to arbitration.

I

Villa Del Rey contends Phillips consented to arbitrate his personal claim, and that by asserting medical malpractice, his personal claim is subject to the agreement to arbitrate. (*Ruiz, supra*, 50 Cal.4th 838.)

The trial court ruled the arbitration agreement did not extend to Phillips’s personal claim, citing *Monschke, supra*, 244 Cal.App.4th 583. But unlike in *Monschke*, Phillips expressly agreed that any claims he might have as an individual would be subject to binding arbitration. That fact distinguishes this case from *Monschke* because there was no such provision in that case. Here, because Phillips consented to arbitrate his personal claim, that claim is subject to arbitration unless there is a risk of conflicting rulings. As we will explain, we conclude there is such a risk in this case.

It is also true that by alleging medical malpractice, Phillips invoked MICRA, which requires arbitration if Margaret was bound to arbitrate. But as we discuss in the next part, Phillips did not have authority to bind Margaret to arbitration.

II

Villa Del Rey contends the durable power of attorney was sufficiently broad to bind the successor claims to arbitration. We disagree.

As a threshold matter, Villa Del Rey claims the trial court ruled by implication that Phillips was authorized to sign on Margaret’s behalf, thus subjecting the successor claims to arbitration. Villa Del Rey adds that because Phillips did not file a cross-appeal,

he is now barred from asserting lack of authority, and we cannot base our decision on a lack of authority. But we are not bound by the trial court's reasoning. It is well settled that a correct trial court disposition will not be reversed on appeal merely because it is based on the wrong reasons. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.) If the disposition is correct on any theory of the law applicable to the case, it must be upheld regardless of the considerations which may have moved the trial court to its conclusion. (*Ibid.*)

Accordingly, we turn to whether Phillips had authority to sign the arbitration agreement on Margaret's behalf. Villa Del Rey argues the power of attorney gave Phillips such authority, characterizing the power of attorney as "expansive," "sweeping" and "almost limitless." However, after briefing was completed in this case, this court issued its opinion in *Hutcheson v. Eskaton FountainWood Lodge* (2017) 17 Cal.App.5th 937, 941 (*Hutcheson*). In *Hutcheson*, this court held that residential care facilities that provide services such as dementia care or other medically-related services are health care providers for the purpose of construing the authority conferred by a power of attorney. If the facility is a health care provider, then an arbitration agreement signed under a power of attorney is enforceable only if the power of attorney meets the requirements of a health care power of attorney. (*Id.* at pp. 945-957)

We asked the parties to file supplemental briefs on the application of *Hutcheson*, *supra*, 17 Cal.App.5th 937. Having considered the supplemental briefs and the arguments of the parties, we conclude Phillips lacked authority to sign the Villa Del Rey arbitration agreement on Margaret's behalf because he did not have a health care power of attorney.

Villa Del Rey provides services that, under *Hutcheson*, *supra*, 17 Cal.App.5th 937, make it a health care provider for the purpose of applying laws relating to powers of attorney. Villa Del Rey provides observation for changes in physical, mental, and emotional condition, routine care, medical care, assistance with medications, and care for

temporary illnesses or recovery from minor surgery. Margaret did not sign a health care power of attorney. Her power of attorney covers financial matters only. Applying *Hutcheson* to this case, Phillips' application to admit Margaret to Villa Del Rey was a health care decision, and Phillips was not authorized to sign an arbitration agreement on behalf of Margaret because he did not have a health care power of attorney from her.

The attempts by Villa Del Rey to distinguish *Hutcheson, supra*, 17 Cal.App.5th 937 are unavailing. It argues (1) there were two competing powers of attorney in *Hutcheson* but only one in this case, (2) the injuries in this case did not arise from medical care, and (3) Margaret led Villa Del Rey to believe Phillips had authority to sign the admission agreement on her behalf because, according to a Villa Del Rey employee, Margaret made "affirmative representations" authorizing Phillips to sign the documents.

Although there were two powers of attorney in *Hutcheson*, one for personal care held by the decedent's sister, and one for health care held by the decedent's niece, the reasoning in *Hutcheson* nevertheless applies here. In that case the issue was whether the sister holding the personal care power of attorney was authorized to make the health care decision to sign, on behalf of the decedent, a residential care facility admission agreement containing an arbitration clause. We concluded the sister did not have such authority because she did not have a health care power of attorney. (*Hutcheson, supra*, 17 Cal.App.5th at pp. 941-942, 946, 949.) Here, the power of attorney held by Phillips did not authorize him to make the health care decision to sign the agreements pertaining to Margaret's care, including the arbitration agreement.

Likewise, even if Margaret's injuries did not arise from the provision of health care also does not change the legal result. The focus in determining whether a health care power of attorney is necessary is on the admission agreement to provide care. If the agreement provides for health care, a health care power of attorney is required. (*Hutcheson, supra*, 17 Cal.App.5th at p. 945.)

Villa Del Rey also argues Phillips had ostensible authority to sign the arbitration agreement because the facts in this case are not like those in *Hutcheson, supra*, 17 Cal.App.5th 937. But being “unlike” *Hutcheson* does not establish ostensible authority. Villa Del Rey does not cite a basis for ostensible authority or the factors to be considered and, consequently, we need not consider the argument further. (See *Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862 [declining to consider issue inadequately briefed].)

III

Villa Del Rey argues that because the successor and personal claims are subject to arbitration, there is no risk of conflicting rulings. However, we conclude the successor claims are not subject to arbitration. Accordingly, the trial court was correct that there is a risk of conflicting rulings if the personal claim goes to arbitration but not the successor claims.

DISPOSITION

The order denying the petition to compel arbitration is affirmed. Phillips shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/S/
MAURO, J.

We concur:

/S/
HULL, Acting P. J.

/S/
HOCH, J.